

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VARTAN FRNZLIAN, HARUTYOUN
FRNZLIAN, GRIGOR FRNZLIAN, NVARD
FRNZLIAN and AGHAVNI HAKOBYAN,

Petitioners,

v.

NANCY ALCANTAR, FIELD OFFICE
DIRECTOR IMMIGRATION AND CUSTOM
ENFORCEMENT, COMMANDER WALL,
WARDEN OF LERDO DETENTION
FACILITY, ALBERTO GONZALES,
ATTORNEY GENERAL OF THE UNITED
STATES, MICHAEL CHERTOFF
SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY,

Respondents.

1:05-cv-00547 OWW HC

ORDER FOR TRANSFER OF
PETITION FOR WRIT OF HABEAS
CORPUS RE: ORDER OF REMOVAL
OR DEPORTATION TO COURT OF
APPEAL PURSUANT TO THE ID
PROTECT ACT OF 2005

Petitioners, Vartan Frnzlian and his family members, bring this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Jurisdiction is invoked under the Constitution of the United States, the Suspension Clause, and the Immigration and Nationality Act (INA) 8 U.S.C. § 1101, et seq., as amended by the Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (IIRIRA), seeking Vartan's release from custody and abrogation of

1 an order of removal. Petitioners claim ineffective assistance of
2 counsel throughout Vartan's immigration proceedings that resulted
3 in a denial of due process of law. Vartan's petition for review
4 before the Court of Appeal for the Ninth Circuit was dismissed by
5 order filed May 14, 2004.

6 Petitioner Vartan Frnzlian was taken into custody March 2,
7 2005, and is currently held at the Lerdo Detention Facility at
8 17645 Industrial Farm Rd., Bakersfield, California in the Eastern
9 District of California, Fresno Division. The family members
10 listed above in the petition were included in the deportation
11 order and are under ICE supervision and threatened with imminent
12 deportation. The deportation order for Vartan Frnzlian's removal
13 from the United States was issued February 6, 2002.

14 Petitioner has moved for his immediate release from custody,
15 at the Lerdo Facility, where he is held pursuant to the
16 provisions of 8 U.S.C. § 1231(a). He claims he is not a danger
17 to the community, is not a flight risk, and his detention denies
18 him due process of law during the pendency of these proceedings.

19 This case was filed in the District Court for the Eastern
20 District of California (Fresno) on April 25, 2005. A hearing on
21 an application for temporary stay and restraining order to enjoin
22 the removal of Vartan Frnzlian was held in open court on April
23 27, 2005, at which time a temporary stay and restraining order
24 against Petitioners' removal were entered.

25 Hearing on Vartan's application for temporary stay,
26 preliminary injunction, and release from custody was held in open
27 court on May 12, 2005. Petitioner was not personally present and
28 appeared through his attorney Gittell Gordon, Esq. The Federal

1 Respondents appeared by and through Assistant United States
2 Attorneys Audrey Hemesath, Esq., and Marianne Pansa, Esq.

3 At the May 12, 2005, hearing the Court was provided with a
4 copy of the REAL ID ACT of 2005 effective May 11, 2005, the date
5 it was signed into law by the President. The REAL ID ACT OF 2005
6 amends 8 U.S.C. § 1158(b)(1) by adding at the end the following:

7 (5) EXCLUSIVE MEANS OF REVIEW. -- Notwithstanding any
8 other provision of law (statutory or non-statutory),
9 including section 2241 Title 28, United States Code, or
10 any other habeas corpus provision, and sections 1361
11 and 1651 of such Title, *a petition for review filed*
12 *with an appropriate court of appeals in accordance with*
13 *this section shall be the sole and exclusive means for*
14 *judicial review of an order of removal entered or*
15 *issued under any provision of this Act, except as*
16 *provided in subsection (e).* (Emphasis added) (The
17 Court has been unable to find subsection (e)).

18
19 (c) Transfer of Cases. -- If an alien's case, brought
20 under section 2241 of Title 28 United States Code, and
21 challenging a final administrative order of removal,
22 deportation, or exclusion is pending in a district
23 court on the date of the enactment of this decision,
24 then the district court shall transfer the case (or the
25 part of the case that challenges the order of removal,
26 deportation, or exclusion) to the court of appeals for
27 the circuit in which a petition for review could have
28 properly been filed under section 242(b)(2) of the
Immigration & Nationality Act (8 U.S.C. 1252),
The Court of appeals shall treat the transferred case
as if it had been filed pursuant to a petition for
review under such section 242 except that subsection
(b)(1) of such section shall not apply.

Pursuant to the provisions of the Real ID Act of 2005 this is a
pending case under 28 U.S.C. § 2241 that challenges an order of
deportation or removal. It must be transferred to the United
States Court of Appeals for the Ninth Circuit.

With respect to Petitioners' request that the District Court
continue a stay and/or injunctive order in effect pending outcome
of the case in the Court of Appeal, reference is made to Ninth

1 Circuit Court of Appeals General Order 6.4 Emergency Motions (c)
2 Motions for Stay of Deportation or Removal in Petitions for
3 Review, which provides in material part: "Upon the filing of a
4 motion or request for stay of removal or deportation, the order
5 of removal or deportation is temporarily stayed until further
6 order of the court."

7 At the hearing the government requested that the District
8 Court not order a further stay or injunctive relief, in reliance
9 upon the Court of Appeal's rule providing for temporary stay of
10 removal or deportation in motions for stay of deportation or
11 removal and petitions for review under General Order 6.4(c)1. In
12 reliance upon the implied representation of the government's
13 attorneys that no removal or deportation action will be
14 undertaken pending transfer of this case to the Court of Appeals
15 for the Ninth Circuit, no further orders for stay or injunctive
16 relief are required in the District Court which lacks
17 jurisdiction to address the 2241 petition for review of the order
18 for deportation or removal.

19 IT IS ORDERED:

20 1. This case is TRANSFERRED to the Ninth Circuit Court of
21 Appeals for the Ninth Circuit as required by the REAL ID ACT OF
22 2005, section 5(c);

23 2. No further stay or injunctive relief against
24 deportation of Petitioners is required based on Ninth Circuit
25 General Order 6.4(c); and

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1 3. The request for immediate release from custody is
2 DENIED WITHOUT PREJUDICE.

3 DATED: May 12, 2005.
4

5 /s/ OLIVER W. WANGER

6 _____
 Oliver W. Wanger
7 UNITED STATES DISTRICT JUDGE

8 frnzlian order re transfer
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